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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,101	08/02/2005	Konrad Tetenborg	P70652US0	2274
136	7590	66/02/2008	EXAMINER	
JACOBSON HOLMAN PLLC			DESAI, HEMANT	
400 SEVENTH STREET N.W.			ART UNIT	PAPER NUMBER
SUITE 600				3721
WASHINGTON, DC 20004			MAIL DATE	DELIVERY MODE
			06/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/544,101	<b>Applicant(s)</b> TETENBORG ET AL.
	<b>Examiner</b> Hemant M. Desai	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 March 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) Claim(s) 1-7 and 10 is/are allowed.
- 6) Claim(s) 11-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/136/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao (6195964) and Watanabe et al. (5139346) and further in view of British Patent (1057264).

The modified bag of Kitao, as explained above, meets all the limitations of claim 11, except for the tubular film is in the form of roll. However, British Patent ('264) discloses that it is known to provide tubular film in the form of roll (see fig. 1) for convenient storage, shipment and subsequent use (see page 2, lines 101-105). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tubular film of Wessling et al. in the form of roll as taught by British Patent ('264) for convenient storage, shipment and subsequent use.

Regarding claim 12, Kitao discloses that the two of the four side walls have side gussets.

Regarding claim 13, Kitao discloses that the front sides of the side-gusseted film tube lie over one another.

Regarding claim 14, Kitao discloses that the side gussets are staved toward the direction of the tube.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-14, alternatively, rejected under 35 U.S.C. 102(b) as being anticipated by British Patent (1057264).

British Patent ('264) discloses a tubular film roll (see fig. 1) comprising a film tube that includes four side walls (front, back and two gussets).

The product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. See MPEP 2113. The product-by-process claims 11-14 results in no structure different from the British Patent ('264).

Regarding claim 12, British Patent discloses that the walls are gusseted (see page 2, lines 128-1300).

Regarding claim 13, British Patent discloses that the front sides of the side-gusseted film tube lie over one another.

Regarding claim 14, British Patent discloses that the side gussets are staved toward the direction of the tube.

***Allowable Subject Matter***

5. Claims 1-7 and 10 are allowed.

***Response to Arguments***

6. Applicant's arguments with respect to claims 11-14 have been fully considered but they are not persuasive.

Applicant's arguments regarding claims 11-14, regarding 35 U.S.C. 102 (b) rejection, note that the tubular film roll of British Patent as claimed in claim 11, discloses the film tube which has four walls and the film is being wound into roll form, which meets all the claimed limitations. "cutting from a single film web and joined to one another by four corresponding seams, each seam including an applied layer of extruded heated adhesive located on an edge of each of the side walls" are process steps and the product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/

Primary Examiner, Art Unit 3721